THE Sham-Indictment QUASH'D,

BEING A

True Account of what paſſed at the *Old-Baily* the 20th of *May*, 1681. when the Miniſter of *Alhallows-Barkin, London,* Anſwered to Mr *Whitaker*'s Indictment.

TOGETHER WITH

Some Juſt Reflections upon a Libel, called, *The Birth and Burning of St.* Michael, &c. Lately Publiſhed.

By a Lover of the Loyal Parish of Barkin.

ROM. IV. 15.

Where no Law is, there is no Tranſgreſſion.

At the COURT in the *Old-Baily, May* 20. 1681.

THIS Day Dr. *Hicks* Miniſter of *Alhallows-Barkin, London,* appeared before the Court to Anſwer that Idle and Frivolous Indictment which was brought in and found againſt him, for Suffering a Figure, with a Trumpet in one hand, and This Inſcription upon the Breaſt of it, *Ariſe ye dead and come to Judgment,* to ſtand and remain undefaced over the Communion Table.

Mr. *Genner*, the Doctors Councel, told the Court, that this Figure was firſt ſet up upon the Hand-Dial at the Weſt end of the Church, between the Figures of *Time* and *Death*, in the Year 1659. And that it remained there till about 6 Years ago; when the Hand-dial upon which it ſtood was brought forward, and ſet over the New Organ, which hindred it from being ſeen by the Miniſter and Congregation. He alſo told

 them

them that it had not the ſhape of St. *Michael*, nor was ever known or reputed to be the Image of that, or any other Saint. And theſe things, which could have been proved upon Oath, being premiſed; he ſaid he conceived there was no Law (unleſs they meant an Ordinance of *Parliament*, for deſtroying and prohibiting all Pictures and Images in Churches made in *May* 1644.) upon which to Ground this Indictment. Nor any Remembrance of Law, but what was found in 3. or 4. of *Edw.* VI. *chap.* 10. to which the Indictment ſeemed to direct. And thereupon moved that the Indictment, and that Statute might both be read.

The Sum of the Indictment was this, *That he*, (and the other Perſons Indicted) *being Superſtitiouſly affected, and diſregarding the Laws of this Realm, did ſuffer the Graven Image of St.* Michael *to ſtand and remain undeſtroyed over the Communion-Table, to the great danger of Introducing Idolatry and Superſtitious Worſhip among the Kings Liege-Subjects, againſt the Law in this Caſe provided, and the Peace of our Soveraign Lord the King, his Crown, and Dignity*, &c.

The Indictment being read, that part of the Statute which concerned the Removal of Popiſh Images; and the Juriſdiction before whom the Offenders were to be Tryed, was alſo read. The Sum of which is contained in theſe words. *And be it further Enacted --- that if any Perſon or Perſons --- that now have or hereafter ſhall have in his, her, or their cuſtody --- any Images --- which heretofore have been taken out of any Church or Chappel, or yet ſtand in any Church or Chappel, and do not before the laſt day of* June *next enſuing, deface and deſtroy, or cauſe to be defaced and deſtroyed the ſame Images, and every of them --- then*, &c. --- *And for the better Execution of the ſaid Act be it Enacted --- that as well Juſtices of Aſſize in their Circuits, as Juſtices of Peace within the limits of their Commiſſion in General Seſſions, ſhall have full Power and Authority to inquire of the Offences aforeſaid, and to hear and determine the ſame, in ſuch form as they may do in other ſuch like Caſes.*

Theſe Clauſes being read, the Court (when Four of the Judges were preſent) after demand made, if any were there to appear for the King, forthwith quaſh'd or null'd the Indictment. Becauſe the matter or pretended offence contained in it was no violation of that Law. And becauſe that Court, before whom the Doctor was Indicted (being a Commiſſion of *Oyer* and *Terminer*) had no Power or Authority to Hear and Determine Offences againſt that Statute, which were to be Tryed by Juſtices of Aſſize, or Juſtices of the Peace.

After all Mr. *Recorder* told the Councel, that his Motion had taken them up a great deal of time, but (ſaith he) if this had been moved before the Judges had come in, I would preſently have told you that there was no Law for the Indictment, as I ſaid before; meaning when Mr. *Sherman*, the Upper Church-Warden, privily took down the Figure, and conveyed it to the *Old-Baily*; where tho' he pleaded Guilty to this Indictment, and unawares ſurprizd Mr. *Hunter*, a moſt Loyal and Honeſt Gentleman, into a Concurrence with him to do the ſame, yet the Court would not ſuffer them to be Fined as that Statute directs.

Where-

Whereas in This Relation it is ſaid, that upon the Demand being made, no Body appeared for the King; that it may not be thought the Doctors appearance was a Surprize, the Reader may take notice that he appeared upon this Indictment the Seſſions before, and pleaded not Guilty, and bound himſelf to the King, in a Bond of 40 *l.* to Traverſe the Indictment at this.

This is the Sum of what then paſſed, and it is publiſhed for the ſecurity of all Cathedral, Collegiate, and Pariſh-Churches, which might otherwiſe upon the account of their Ornaments be obnoxious to the malice of thoſe, who pretend to abhor the very ſhadow of Idols and Idolatry, that they may more plauſibly commit Sacriledge, and other Iniquities, and if any ſuch be yet deſirous to trouble the Clergy, or others, with any more ſuch *Sham-Indictments*, they cannot want occaſion in moſt of the Pariſh-Churches of this City, as well as ſome of his Majeſties Chappels Royal, and ſome Chappels of Inns-of-Court: More particularly in *Barkin* Church, which at the top is ſo ſet about with Gilded Figures called *Seraphims*, (which are the higheſt Order of Angels,) that it is almoſt impoſſible to kneel, or bow in it, at Prayers or Sacrament, but under, or before one or other of them; nay, there is one ſet up at the Eaſt end of the Church, plum-over the Communion Table, towards which the late Upper Church-Warden, as many of the Pariſh will teſtifie, hath frequently Bow'd without any Scruple of Conſcience, while the Figure, miſcalled St. *Michael* in the Indictment, ſtood thereupon.

An ADVERTISEMENT.

WHereas there is lately publiſhed by *Richard Janeway*, a Libellous Pamphlet, with this Title, *The Birth and Burning of the Image called St.* Michael; *Containing the Subſtance of a Narrative given into the Veſtry of All Saints* Barkin, London, *by Mr.* Edm. Sherman, *late Upper Church-Warden of the ſame*: This is to Certifie all whom it may concern, that the ſaid Narrative was read in the Veſtry, and that Dr. *Hickes* the Miniſter, and Mr. *Hunter*, the preſent Upper Church-Warden, with many other Gentlemen met in the Veſtry, did ſome or other of them, Charge the ſaid Mr. *Sherman*, from Paragraph to Paragraph, with many Falſities, Prevarications, and unjuſt Aſperſions, to which the ſaid Mr. *Sherman* could make little or no reply, and that after the reading of it, they declared before his face, and ordered it to be Written down, that it might be Regiſtred, *That it was their Opinion, that his Narrative was a Rude, Scurrilous, and Inſolent paper, and Aſſerted that it had very many Falſities, and Prevarications in it, and that it highly tended to the Diſhonour of the Eſtabliſhed Proteſtant Religion, and was a Libel upon the whole Pariſh, and that it ſhould be re-*

ſerved

ſerved for further conſideration, and in the mean time deſired the Doctor to keep it.

This the Doctor, and Gentlemen of the Veſtry, who know the matters of fact contained in that Libel, declared before Mr. *Shermans* face, and are ready to teſtifie upon all occaſions: And I leave it to all Impartial men, to determine, whether Twenty men or more, all of *UNBROKEN* Reputations are to be believed, or Mr. *Sherman* alone. And as to the Impudence, Prophaneneſs, and Scurrility of the Libel, let every modeſt and ſerious Reader be judge.

Zeph. 4. 5 *The unjuſt knoweth no ſhame.*

LONDON,

Printed for *Randal Tayler*, 1681.